

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

3:05w-783-HTW-JCS

UNITED STATES DISTRICT COURT		District Southern District of Mississippi	
Name of Movant Russell Montague		Prisoner No. 28766-034	Case No. 3:04cr26WSu
Place of Confinement Federal Correctional Institution, Texarkana, TX 75505-7000			
UNITED STATES OF AMERICA		V. Russell L. Montague (name under which convicted)	
MOTION			
1. Name and location of court which entered the judgment of conviction under		Southern District, Mississippi Jackson Div.	
		<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> FILED DEC 27 2005 J. T. NOBLIN, CLERK BY _____ DEPUTY </div>	
2. Date of judgment of conviction		<u>unknown</u>	
3. Length of sentence		<u>180 months</u>	
4. Nature of offense involved (all counts) <u>18 USC §924(1) Theft of firearms, 922(g)(1) Felon in possession of a firearm, 924(c) Use of firearm during the commission of a drug trafficking offense and 26 USC §5851(d) Possession of an unregistered firearm</u>			
5. What was your plea? (Check one)			
(a) Not guilty <input type="checkbox"/>			
(b) Guilty <input checked="" type="checkbox"/>			
(c) Nolo contendere <input type="checkbox"/>			
If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:			
Counts 1,3: 18 USC §922(j) Trafficking in stolen firearms - dismissed, Count 9: 18 USC §641: Embezzlement of money belonging to the United States - dismissed			
6. If you pleaded not guilty, what kind of trial did you have? (Check one)			
(a) Jury <input type="checkbox"/>			
(b) Judge only <input type="checkbox"/>			
7. Did you testify at the trial?			
Yes <input type="checkbox"/> No <input type="checkbox"/>			
8. Did you appeal from the judgment of conviction?			
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			

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9. If you did appeal, answer the following:

- (a) Name of court _____
- (b) Result _____
- (c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

Yes ☐ No ☐

(6) Date of result

Yes ☐No ☐

Yes ☐

No ☐[illegible]

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Defendant's plea of guilty and sentence were the result of ineffective assistance of counsel.

Supporting FACTS (state *briefly* without citing cases or law)

See attached Memorandum of Points and Authorities.

B. Ground two: Defendant's plea of guilty was not knowing and voluntary.

Supporting FACTS (state *briefly* without citing cases or law)

See attached Memorandum of Points and Authorities.

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law)

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D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

No previous appeal, as claims of ineffective assistance of counsel and that a plea of guilty was not "knowing and voluntary" are properly litigated in a 28 USC §2255 proceeding.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Same

(b) At arraignment and plea John Mark Colette, 401 East Capitol Street, Suite 308,
Heritage Building, Jackson, MS 39201

(c) At trial —(d) At sentencing Same

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(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12/16/05
(Date)

X Russell Montague
Signature of Movant